

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 694 of 1999

in

SPECIAL CIVIL APPLICATION No 1416 of 1998

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT COOPERATIVE MILK MARKETING FEDERATION LIMITED

Versus

DEPARTMENT OF TELECOMMUNICATION

Appearance:

MR DC DAVE for Appellant
MR JAYANT PATEL for Respondent No. 1

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 21/10/1999

ORAL JUDGEMENT

(per Thakkar ,Actg.C.J)

1. Admitted. Mr.Jayant Patel appears for the respondent and waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This appeal is filed against summary dismissal of Special Civil Application No.1416 of 1998 by the learned Single Judge.

3. The appellant was the original petitioner. It filed Special Civil Application No.1416 of 1998 for an appropriate writ, direction or order quashing and setting the order, dated December 2, 1998 (Exh."M" to the petition) passed by the General Manager, Department of Telecommunications, District Nadiad-respondent herein and by directing him not to insist for payment on the basis of telephone bills, dated April 1, 1996, and June 1, 1996 at (Exhs "A" and "H" to the petition) and by issuing fresh bills excluding objectionable telephone calls figuring therein. A prayer was also made for an order directing the respondent to reconnect Telephone No.40193 of the petitioner.

3. The case of the petitioner was that it is a Cooperative Society constituted and registered under the Gujarat Cooperative Societies Act, 1961 dealing in edible oil and milk products under the brand names of 'Amul' . According to the petitioner, a telephone bearing No.40193 was installed at the residence of the Managing Director of the petitioner at Anand. On 1.4.1996 a huge bill for a sum of Rs.3,62,723/- was issued by the department for a period of two months from January 15, 1995 to March 14, 1996. It was the case of the petitioner that it was grossly excessive and extremely high in view of the fact that the maximum bill received by the petitioner earlier was for a sum of Rs.8,500/-. Subsequently again, another bill was issued on June 1, 1996 for Rs.91,929/- which was also very excessive. Under the circumstances, the petitioner was constrained to approach this Court by filing Special Civil Application No.4188 of 1996. This court directed the respondent to dispose of the appeal preferred by the petitioner. In the meanwhile, during the pendency and disposal of appeal, interim relief granted earlier was permitted to be continued. It was the case of the petitioner-appellant that the appeal came to be disposed of without considering in their proper perspective the points raised by the appellant. Since the directions of this court in earlier petition were not complied with in letter and spirit again the petitioner-appellant approached this court by filing the present petition. Initially notice was issued and

ad-interim relief was granted by this court. After hearing the parties, however, the learned Single Judge upheld the preliminary objection raised on behalf of the respondent that in accordance with the provisions of Section 7B of the Indian Telegraph Act, 1885 an alternative remedy was available to the petitioner and as held by the Division bench of this court in GOVINDBHAI PREMJIBHAI CHOVATIA vs CHIEF GENERAL MANAGER, GUJARAT TELECOM CIRCLE & ORS 1995(2)GLH 1041, the petition would not be maintainable. In the present proceedings, contentions on merits were also advanced by the learned advocate for appellant. It was urged that the remedy provided by Section 7B of the Act can not be said to be alternative and equally efficacious remedy available to the appellant.

4. During the pendency of Letters Patent Appeal another telephone of the appellant being Telephone No.41878 came to be disconnected in purported exercise of power under Rule 443 of the Indian Telegraph Rules, 1951(hereinafter referred to as "Rules"). The said action according to the appellant was arbitrary, unlawful and unreasonable.

5. The department has committed illegality in not relying upon a Circular, dated 4.9.1986 particularly clause 6.7 thereof under which at the most, double payment of undisputed amount can be insisted. In the instant case, maximum bill was Rs.8,500/- and hence the appellant can be directed to pay Rs.17,000/-. Payment of Rs.4 lacs and odd could not have been demanded.

6. Even if it is assumed that remedy provided by Section 7B is equally efficacious alternative remedy, an action of disconnection of telephone can be taken only after adjudication under section 7B. When bill can be said to be final and if it is not paid thereafter.

7. In any case, in the facts and circumstances, an appropriate direction can be issued by this court to reconnect other telephone No.41878 on appropriate conditions imposed on the appellant.

8. Mr.Patel, Learned Counsel for respondent-department, on the other hand, submitted that the order passed by the learned single judge cannot be said to be illegal or contrary to law. The learned single judge has followed the judgment of the Division Bench and disposed of the petition. Said order does not, therefore, require any interference.

9. He also submitted that the Division Bench of this court in ARUN PAPER PRODUCTS vs UNION OF INDIA & ORS 1989(1) GLH 186 held that the provisions of Rule 443 of the Rules are intra vires, constitutional and for nonpayment of bill of one telephone another telephone of the subscriber can be disconnected.

10. He finally submitted that the bill pertains to International Subscriber Trunk Dialing (ISD) for which part payment has to be made by the authorities, and hence, if interim relief is granted or any order is passed directing the department to reconnect the telephone number without ordering payment, the department would suffer. According to him, even if the court is of the opinion that as both the telephones are disconnected and that some relief should be granted appropriate direction may be issued to arbitrator so that the matter can be disposed of at the earliest.

11. It may be stated that though Telephone No.41093 was disconnected earlier and the dispute was raised by the petitioner-appellant as early as in April, 1996. First bill was issued on 1.4.96 for Rs.3,62,763/-. Another bill was issued on 1.6.96 for Rs.91,929/-. It was disconnected as early as May 29, 1996 and it is still not reconnected. Telephone No.41878 was disconnected by the department in view of the fact that the petition filed by the petitioner was dismissed which is challenged in the present appeal. It is no doubt true that Rule 443 is held to be intravires by this court and such an action could have been taken by the department.

12. In peculiar facts and circumstances, that the appellant is without any telephone at the residence of Managing Director of the petitioner and since both the telephones were disconnected and that the second telephone was disconnected very recently after the disposal of Special Civil Application and that we decide the appeal today, in our opinion, it would be in the interest of justice if we direct the department to reconnect the said Telephone No.41878 which was disconnected recently on payment of Rs.1.5 lacs. Such reconnection will be made only after payment of above amount. This payment, however, will be without prejudice to the rights and contentions of the parties, and this order is passed in peculiar facts which we have narrated hereinbefore.

13. So far as arbitration is concerned, the dispute will be decided by the appropriate authority in

accordance with the provisions of Section 7B of the Act as expeditiously as possibly, preferably before 31.12.1999. Appeal is disposed of accordingly. In the facts and circumstances, no order as to costs.

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